

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

IN RE:

CHRISTOPHER CALLAWAY
320 ZED CREEK RD
LUFKIN, TX 75904
xxx-xx-2517
LORA WINDHAM
320 ZED CREEK RD
LUFKIN, TX 75904
xxx-xx-8369

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Case No. 22-90147

Chapter 13

Debtor(s)

MOTION TO DISMISS AND SETTING HEARING

The Trustee requests this Court to set this Motion for hearing on the 30th day of March, 2023, at 10:00 am UNITED STATES BANKRUPTCY COURT, 300 WILLOW SUITE 112, BEAUMONT, TX

To the Honorable Judge of Said Court:

COMES NOW LLOYD KRAUS, Chapter 13 Trustee, and files this his Motion to Dismiss and Setting Hearing in the above numbered and styled proceeding, and for cause would show this Honorable Court as follows:

1. **Jurisdiction:** The Court has jurisdiction over this proceeding in accordance with 28 U.S.C. § 157 and 1334. This is a core proceeding according to 28 U.S.C. § 157(b).
2. **Dismiss Case for Failure to Make Plan Payments:** The Trustee requests this case be dismissed pursuant to the provisions of 11 U.S.C. § 1307(c)(1) based upon the failure of the Debtors to make plan payments and the Trustee asserts that such dismissal would be in the best interests of the Creditors.
3. **Amount of arrearage in Plan Payments:** The Debtors are in arrears in the amount of **\$1,650.00** as of 2/22/2023 plus any additional plan payments that come due between that date and the hearing date noted above.
4. **Bringing Plan Payments Current Prior to the Hearing:** To prevent the dismissal of this case, the Debtors may bring the plan payments current by making payments

by one of the acceptable options as set forth on the Trustee's website in sufficient time for the payment to post prior to the Court hearing.¹

WHEREFORE, PREMISES CONSIDERED, the Trustee requests that this case be dismissed based upon the grounds as set forth herein; that any funds remaining on deposit with the Trustee shall be distributed to the Debtors upon the dismissal of this case per *Viegelahn v Lopez (In re Lopez)*, 2018 WL 3626628 at *5-6 (5th Cir. July 31, 2018); and that the Trustee be given such other relief that the Trustee may show himself entitled.

Respectfully submitted,

Lloyd Kraus,
CHAPTER 13 TRUSTEE

/s/ Lloyd Kraus
Lloyd Kraus, Chapter 13 Trustee SBN 24066773
110 N. College, Suite 1200
Tyler, TX 75702
(903) 593-7777; FAX (903) 597-1313

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion to Dismiss and Setting Hearing has been served upon the following parties in interest by mailing a copy of same to them via first class mail or electronically on 2/22/2023:

W DAVID STEPHENS
P O BOX 444
LUFKIN, TX 75902

CHRISTOPHER CALLAWAY
320 ZED CREEK RD
LUFKIN, TX 75904

LORA WINDHAM
320 ZED CREEK RD
LUFKIN, TX 75904

/s/ Lloyd Kraus
Lloyd Kraus

¹ See the various payment options at the Trustee's website at <http://ch13tyler.com> under the tab on the left of the screen entitled "Debtors".